

11:19:01

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,) CV-14-5344-BLF
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) DECEMBER 14, 2016
)
ARISTA NETWORKS, INC.,) VOLUME 14
)
DEFENDANT) PAGES 2823-2839
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
BY: DAVID A. NELSON
500 WEST MADISON STREET, SUITE 2450
CHICAGO, IL 60661

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
BY: SEAN PAK
50 CALIFORNIA STREET, 22ND FLOOR
SAN FRANCISCO, CALIFORNIA 94111

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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APPEARANCES (CONTINUED)

FOR THE DEFENDANT: KEKER & VAN NEST, LLP
BY: ROBERT ADDY VAN NEST
BRIAN FERRALL
DAVID J. SILBERT
ELIZABETH K. MCCLOSKEY
EDUARDO E. SANTACANA
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SAN FRANCISCO, CA 94111-1809

1 SAN JOSE, CALIFORNIA

DECEMBER 14, 2016

11:19:14 2 P R O C E E D I N G S

11:27:01 3 (COURT CONVENED AT 11:27 A.M.)

11:27:02 4 THE COURT: GOOD MORNING, EVERYONE. PLEASE BE
11:27:04 5 SEATED.

11:27:05 6 WE ARE ON THE RECORD IN CISCO VERSUS ARISTA, AND ALL OF
11:27:07 7 OUR JURORS ARE PRESENT. AND COUNSEL ARE HERE AS WELL, ALONG
11:27:12 8 WITH THE PARTIES.

11:27:14 9 GOOD MORNING, TO EVERYONE. I HAVE BEEN INFORMED THAT THE
11:27:18 10 JURY HAS A VERDICT.

11:27:19 11 AND BEFORE WE GET STARTED, I JUST WANT TO MAKE SURE
11:27:22 12 THAT -- I KNOW THE JURORS HAVE BEEN SEATED IN THEIR NUMERICAL
11:27:25 13 ORDER BASED ON THEIR RANDOM SELECTION. SO COUNSEL, BEFORE I
11:27:29 14 RECEIVE THE VERDICT, I'M JUST GOING TO MAKE SURE THAT I HAVE
11:27:32 15 THE CORRECT ORDER OF OUR JURORS.

11:27:35 16 JUROR NUMBER 1, MR. WANG?

11:27:37 17 JUROR: YES.

11:27:37 18 THE COURT: JUROR NUMBER 2, MR. RUDUD?

11:27:37 19 JUROR: YES.

11:27:41 20 THE COURT: JUROR NUMBER 3, MR. HAMILTON?

11:27:41 21 JUROR: YES.

11:27:43 22 THE COURT: JUROR NUMBER 4, MS. GROVE?

11:27:43 23 JUROR: YES.

11:27:44 24 THE COURT: JUROR NUMBER 5, MS. GORDON?

11:27:44 25 JUROR: YES.

11:27:46 1 THE COURT: JUROR NUMBER 6, MS. KASAI?

11:27:46 2 JUROR: YES.

11:27:49 3 THE COURT: JUROR NUMBER 7, MS. LANDEROS.

11:27:49 4 JUROR: YES.

11:27:51 5 THE COURT: AND JUROR NUMBER 8, MR. GONDA.

11:27:54 6 JUROR: GONDA.

11:27:55 7 THE COURT: SORRY, I SHOULD PUT MY GLASSES ON AND

11:27:58 8 THEN I CAN SEE IT BETTER. SORRY.

11:28:00 9 I DO UNDERSTAND THE JURY HAS REACHED A VERDICT. WHO IS

11:28:03 10 THE PRESIDING JUROR?

11:28:06 11 JUROR: I AM.

11:28:06 12 THE COURT: THAT'S MR. WANG. GOOD MORNING.

11:28:09 13 AND HAS THE JURY REACHED A VERDICT?

11:28:11 14 JUROR: YES, IT HAS.

11:28:12 15 THE COURT: AND IF YOU WOULD GIVE THE FORM TO THE

11:28:15 16 CLERK, PLEASE.

11:28:19 17 THE CLERK: IT'S STILL IN THE JURY ROOM, YOUR HONOR.

11:28:24 18 (PAUSE IN PROCEEDINGS.)

11:29:15 19 THE COURT: ALL RIGHT. I WILL NOW ASK THE CLERK TO

11:29:17 20 READ THE VERDICT.

11:29:20 21 THE CLERK: IN THE UNITED STATES DISTRICT COURT,

11:29:29 22 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION, IN CASE

11:29:35 23 CISCO SYSTEMS VERSUS ARISTA NETWORKS, CV-14-5344-BLF.

11:29:43 24 JURY VERDICT.

11:29:44 25 COPYRIGHT INFRINGEMENT: USER INTERFACES.

11:29:48 1 QUESTION 1. HAS CISCO PROVEN THAT ARISTA INFRINGED ANY OF
11:29:51 2 CISCO'S USER INTERFACES?

11:29:57 3 JURY VERDICT, YES.

11:29:58 4 QUESTION 2. AS TO THE USER INTERFACES YOU FOUND TO BE
11:30:01 5 INFRINGED IN QUESTION 1, HAS ARISTA PROVEN ANY OF THE
11:30:04 6 FOLLOWING:

11:30:05 7 A. FAIR USE? JURY VERDICT, NO.

11:30:10 8 B. SCÈNES À FAIRE? JURY VERDICT, YES.

11:30:15 9 C. MERGER? JURY VERDICT, NO.

11:30:21 10 QUESTION 5. AS TO THE USER INTERFACES YOU FOUND TO BE
11:30:25 11 INFRINGED IN QUESTION 1, HAS ARISTA PROVEN ANY OF THE
11:30:28 12 FOLLOWING:

11:30:28 13 A. ABANDONMENT? JURY VERDICT, NO.

11:30:35 14 B. COPYRIGHT MISUSE? JURY VERDICT NO.

11:30:44 15 COPYRIGHT INFRINGEMENT: TECHNICAL MANUALS.

11:30:45 16 QUESTION 6. HAS CISCO PROVEN THAT ARISTA INFRINGED ANY OF
11:30:49 17 CISCO'S TECHNICAL MANUALS?

11:30:52 18 JURY VERDICT NO.

11:30:55 19 PATENT INFRINGEMENT.

11:30:56 20 QUESTION 7. HAS CISCO PROVEN THAT ARISTA DIRECTLY
11:31:00 21 INFRINGED CLAIMS 1 AND OR 14 OF THE '526 PATENT?

11:31:06 22 A. CLAIM 1. JURY VERDICT, NO.

11:31:09 23 B. CLAIM 14. JURY VERDICT, NO.

11:31:15 24 QUESTION 8. HAS CISCO PROVEN THAT ARISTA INDUCED
11:31:20 25 INFRINGEMENT OF CLAIMS 1 AND OR 14 OF THE '526 PATENT?

11:31:24 1 A. CLAIM 1. JURY VERDICT, NO.

11:31:27 2 B. CLAIM 14. JURY VERDICT, NO.

11:31:34 3 QUESTION 9. HAS CISCO PROVEN THAT ARISTA CONTRIBUTORILY
11:31:41 4 INFRINGED CLAIMS 1 AND 14 OF THE '526 PATENT?

11:31:45 5 A. CLAIM 1. JURY VERDICT, NO.

11:31:49 6 B. CLAIM 14. JURY VERDICT, NO.

11:31:52 7 SIGNED BY THE PRESIDING JUROR AND DATED DECEMBER 14, 2016.

11:31:58 8 THE COURT: THANK YOU.

11:32:00 9 WOULD EITHER SIDE LIKE ME TO POLL THE JURY?

11:32:06 10 MR. NELSON: NO, I DON'T THINK THAT'S NECESSARY,
11:32:08 11 YOUR HONOR.

11:32:08 12 THE COURT: MR. VAN NEST?

11:32:09 13 MR. VAN NEST: NO, YOUR HONOR.

11:32:10 14 THE COURT: ALL RIGHT.

11:32:11 15 THEN LET ME JUST ASK OUR PRESIDING JUROR, IS THE VERDICT
11:32:15 16 AS READ BY THE CLERK, CORRECTLY STATED ON THE RECORD?

11:32:18 17 JUROR: YES, IT IS.

11:32:19 18 THE COURT: AND DOES THIS REPRESENT THE VERDICT OF
11:32:21 19 EACH AND EVERY ONE OF THE JURORS IN THIS MATTER?

11:32:24 20 JUROR: YES, IT DOES.

11:32:25 21 THE COURT: ALL RIGHT.

11:32:25 22 DO ALL OF YOU AGREE THAT THE VERDICT, AS READ BY THE
11:32:28 23 CLERK, ACCURATELY REFLECTS THE VERDICT OF THIS JURY?

11:32:31 24 JUROR: YES.

11:32:32 25 THE COURT: AND YOU WERE UNANIMOUS IN THESE VOTES?

11:32:35 1 JUROR: YES.

11:32:35 2 THE COURT: ALL RIGHT.

11:32:36 3 COUNSEL, IF YOU WOULD PLEASE APPROACH FOR A SIDEBAR.

11:32:50 4 (SIDEBAR DISCUSSION ON THE RECORD.)

11:32:55 5 THE COURT: WAS THERE ANYTHING ABOUT THE VERDICT THAT
11:32:58 6 YOU THINK IS INCONSISTENT OR INCORRECT THAT THE JURY COULD BE
11:33:01 7 SENT BACK TO THE DELIBERATION ROOM TO RECONSIDER OR TO CORRECT
11:33:04 8 IN THIS VERDICT FORM?

11:33:11 9 MR. VAN NEST: NO, YOUR HONOR.

11:33:12 10 MR. NELSON: NOT IN THE FORM. NO, YOUR HONOR.

11:33:14 11 THE COURT: ALL RIGHT.

11:33:14 12 IT IS THE PREDICATE TO EXCUSING THE JURY, BECAUSE IF
11:33:18 13 THERE'S SOMETHING THAT WAS INCONSISTENT OR INCORRECT IN THEIR
11:33:21 14 FOLLOWING OF INSTRUCTIONS THAT THEY COULD CORRECT NOW, I WOULD
11:33:25 15 ASK YOU TO LET ME KNOW AND DESCRIBE IT SO I CAN DECIDE WHETHER
11:33:29 16 OR NOT THAT'S WHAT THEY SHOULD DO.

11:33:31 17 MR. VAN NEST: NO, YOUR HONOR. THEY MAY BE EXCUSED.

11:33:34 18 MR. NELSON: RIGHT. WE WILL HAVE 50(B) MOTIONS,
11:33:37 19 OBVIOUSLY, THAT WE ARE NOT WAIVING, BUT THAT'S NOT WHAT YOU ARE
11:33:40 20 ASKING ME.

11:33:41 21 THE COURT: THAT'S NOT WHAT I'M ASKING.

11:33:42 22 MR. NELSON: RIGHT.

11:33:42 23 INCONSISTENCY IN THE VERDICT, AND I BELIEVE THAT THERE IS
11:33:44 24 NOT, YOUR HONOR.

11:33:45 25 THE COURT: OKAY. THANK YOU.

(THE FOLLOWING WAS ON THE RECORD.)

THE COURT: ALL RIGHT.

COUNSEL, IS THERE ANY REASON I SHOULD NOT NOW EXCUSE THE JURY?

MR. VAN NEST: NO, YOUR HONOR. YOU MAY THANK AND EXCUSE THE JURY.

MR. NELSON: SAME, YOUR HONOR.

THE COURT: ALL RIGHT.

LADIES AND GENTLEMEN, I WANT TO THANK YOU FOR YOUR JURY SERVICE. YOU HAVE BEEN HERE -- ACTUALLY, YOU STARTED WITH ME BEFORE THANKSGIVING WHEN WE CAME IN AND FILLED OUT THE PAPERWORK. YOU HAVE BEEN PROMPT EVERY DAY, YOU'VE WORKED THESE LONG DAYS THAT I HAVE KEPT YOU HERE, AND YOU ABIDED BY THAT SCHEDULE IN YOUR DELIBERATIONS.

AND ON BEHALF OF THE COURT, BUT MORE IMPORTANTLY ON BEHALF OF OUR ENTIRE COMMUNITY, I WOULD LIKE TO THANK YOU FOR YOUR JURY SERVICE. IT IS ONE OF THE THINGS WE DO TO DEMONSTRATE OUR CITIZENSHIP, AND YOU HAVE CERTAINLY DONE IT WELL, AND I AM VERY GRATEFUL TO YOU, BUT I ONLY SPEAK AS A MEMBER OF THE COMMUNITY IN THANKING YOU.

WE ALL SERVE ON JURIES, BUT -- OR AT LEAST WE ARE CALLED FOR JURY SERVICE, NO ONE EVER WANTS ME, BUT THEY CLEARLY WANT YOU, AND I WANT TO THANK YOU FOR THAT.

AT THIS TIME, I'M GOING TO EXCUSE YOU. I'M GOING TO HAVE YOU LEAVE YOUR BADGES AND NOTES AND EVERYTHING WITH ME. WE

11:34:59 1 WILL SHRED THEM. NOBODY WILL READ THEM. ANYTHING THAT WAS IN
11:35:02 2 THE JURY ROOM THAT WAS PART OF YOUR DELIBERATIONS WILL BE
11:35:05 3 DESTROYED WITHOUT THE PARTIES OR ME HAVING ACCESS TO LOOK AT
11:35:09 4 IT.

11:35:09 5 AND YOU ARE NOW FREE TO TALK ABOUT THIS CASE WITH ANYONE,
11:35:12 6 OR NOT, AT YOUR CHOICE. YOU CAN GO BACK AND READ WHATEVER YOU
11:35:15 7 MIGHT THINK IS OUT THERE TO READ ABOUT THE CASE. YOU ARE
11:35:18 8 WELCOME TO DO THAT.

11:35:19 9 AND LET ME TELL YOU THAT THE OTHER THING IS THAT OFTEN THE
11:35:22 10 ATTORNEYS WANT TO PERSONALLY THANK YOU AND THEY WANT TO HEAR
11:35:26 11 SOME COMMENTS AND IMPRESSIONS THAT YOU MIGHT HAVE.

11:35:29 12 AND SO FOR TODAY, I ACTUALLY HAVE A WAY OF DOING THAT THAT
11:35:32 13 SHOULD BE FAIRLY EASY FOR YOU, BUT I DO WANT TO LET YOU KNOW
11:35:36 14 THAT THE PARTIES ACTUALLY ARE ENTITLED IN THE FUTURE TO CONTACT
11:35:40 15 YOU AND TO ASK YOU IF YOU WOULD LIKE TO SPEAK TO THEM ABOUT
11:35:43 16 YOUR JURY SERVICE.

11:35:44 17 AND IT'S PERFECTLY APPROPRIATE, BUT BY THE SAME TOKEN JUST
11:35:48 18 LIKE ANY REQUEST, YOU ARE FREE TO SAY SURE AND YOU ARE FREE TO
11:35:51 19 SAY, NO, THANK YOU. AND THEY WILL HONOR THAT COMPLETELY, BUT I
11:35:55 20 DON'T WANT YOU TO BE SURPRISED IF YOU DO GET A CALL.

11:35:58 21 BUT MORE IMMEDIATELY, WHAT I'M GOING TO ASK IS THAT I'M
11:36:01 22 GOING TO HAVE THE LAWYERS COME BACK TO ME AFTER THEY HAVE A
11:36:04 23 CHANCE TO THANK YOU. BUT I DON'T WANT TO HOLD YOU UP WHILE I
11:36:07 24 DO COURT BUSINESS WITH THE ATTORNEYS.

11:36:09 25 SO I'M GOING TO HAVE YOU GATHER YOUR THINGS FROM THE JURY

11:36:13 1 ROOM. YOU WILL GO OUT TO THE ELEVATORS AS YOU NORMALLY DO, AND
11:36:16 2 IF YOU WISH TO SPEAK WITH THE ATTORNEYS TODAY, IF YOU LINGER IN
11:36:19 3 THE HALLWAY UP HERE BY THE ELEVATORS, THE LAWYERS WILL HAVE THE
11:36:23 4 OPPORTUNITY TO THANK YOU AND CHAT WITH YOU.

11:36:25 5 IF YOU DON'T WANT TO STAY AND CHAT, GOING DOWN THAT
11:36:28 6 ELEVATOR WILL SPEAK VOLUMES ABOUT WHAT YOU WANT TO DO, AND NO
11:36:31 7 ONE WILL STOP YOU, AND YOU WOULD BE FREE TO GO.

11:36:34 8 BUT I WILL SAY, IF YOU ARE INCLINED, IT'S ALWAYS CERTAINLY
11:36:37 9 NICE TO RECEIVE PERSONAL THANKS, WHICH I'M SURE YOU WOULD
11:36:40 10 RECEIVE FROM THE ATTORNEYS, AND ANY OF THOSE IMPRESSIONS YOU
11:36:44 11 WANTED TO SHARE ARE ALWAYS APPRECIATED. IF YOU DON'T HAVE
11:36:48 12 ANYTHING TO SHARE, THAT'S UNDERSTOOD AND RESPECTED.

11:36:50 13 SO COUNSEL, WITH THAT, I'M GOING TO RELEASE THE JURY. I'M
11:36:55 14 GOING TO EXCUSE YOU TO SPEAK WITH THEM. PLEASE COME BACK SO
11:36:59 15 THAT WE CAN FINISH UP OUR WORK ON THE RECORD, AND WE WILL DO
11:37:02 16 THAT BEFORE LUNCH BECAUSE I DON'T WANT TO HAVE YOU COME BACK IN
11:37:05 17 AN HOUR OR SO FROM NOW.

11:37:07 18 SO YOU JUST KEEP TABS ABOUT WITH US, WE WILL KEEP AN EYE
11:37:11 19 ON HOW THINGS ARE GOING.

11:37:12 20 SO LADIES AND GENTLEMEN, WITH THAT, MY VERY BEST THANKS
11:37:15 21 AND HAPPY HOLIDAYS TO ALL OF YOU.

11:37:17 22 YOU ARE EXCUSED.

11:37:20 23 (JURY OUT AT 11:37 A.M.)

11:37:20 24 THE COURT: WE WILL BE IN RECESS.

11:38:23 25 (RECESS FROM 11:38 A.M. UNTIL 11:44 A.M.)

11:44:04 1 THE COURT: ALL RIGHT. WE ARE BACK ON THE RECORD.

11:44:06 2 I DON'T WANT TO KEEP YOU LONG, BUT I DO, OF COURSE, HAVE
11:44:09 3 SOME HOUSEKEEPING. I MADE SOME NOTES TO SEE WHAT WE WERE GOING
11:44:12 4 TO BE DOING, AND I WANT TO FIND OUT FROM YOU WHETHER THERE'S
11:44:16 5 ANYTHING ELSE.

11:44:17 6 CERTAINLY, ALLEGED IN THE PAPERS ARE EQUITABLE ISSUES, AND
11:44:20 7 I DON'T KNOW WHETHER ANY OF THEM ARE RELEVANT WITH THIS
11:44:23 8 VERDICT.

11:44:23 9 AND SO I ASK FOR YOUR COMMENT ON THAT BECAUSE I HAVE TO
11:44:29 10 SET A DATE.

11:44:31 11 MR. NELSON: UNLESS SOMEBODY CORRECTS ME, BUT I DON'T
11:44:37 12 THINK THAT'S SOMETHING WE NEED TO DO RIGHT NOW. I DON'T KNOW
11:44:41 13 WHY YOUR HONOR WOULD HAVE TO RESOLVE THOSE THINGS RIGHT NOW.

11:44:44 14 THE COURT: WHEN YOU SAY RIGHT NOW, I DIDN'T MEAN
11:44:46 15 TODAY, OF COURSE, BUT THIS PHASE, BEFORE JUDGMENT IS ENTERED.

11:44:50 16 MR. NELSON: CORRECT. AGREED.

11:44:51 17 THE COURT: THAT'S WHAT I MEAN.

11:44:53 18 MR. NELSON: THAT'S WHAT I'M SAYING.

11:44:55 19 OBVIOUSLY, WE ARE NOT WAIVING -- WELL, THEY WOULD BE THE
11:44:58 20 ONES NOT WAIVING, SO I'M KIND OF SPEAKING FOR THEM. BUT FROM
11:45:02 21 OUR PERSPECTIVE, THERE'S NOTHING YOU NEED TO DO IN TERMS OF
11:45:06 22 SETTING AN ADDITIONAL HEARING AT THIS POINT.

11:45:09 23 THE COURT: OKAY.

11:45:10 24 MR. VAN NEST?

11:45:10 25 MR. VAN NEST: I THINK THE EQUITABLE ISSUES ARE MOOT,

11:45:12 1 BUT RESERVED. THEY ARE MOOT FOR NOW.

11:45:14 2 IF YOUR HONOR WERE TO GRANT A RULE 50 MOTION, THEN WE
11:45:17 3 WOULD ASK THAT THEY BE RESOLVED BY THE COURT FOLLOWING THAT.
11:45:20 4 BUT UNLESS AND UNTIL THAT HAPPENS, THEY ARE MOOT AND THERE'S NO
11:45:23 5 FURTHER ACTION REQUIRED.

11:45:24 6 THE COURT: THAT IS MY VIEW AS WELL.

11:45:25 7 I CERTAINLY WANTED TO HEAR IT FROM EACH OF YOU, IN CASE I
11:45:28 8 WAS MISTAKEN. AND I WOULD AGREE, THE ISSUES ARE NOT WAIVED.

11:45:33 9 AND IF ON JMOL, FIRST, IF I WERE TO GRANT A NEW TRIAL,
11:45:37 10 THEN OF COURSE EVERYTHING IS BACK. IF I GRANT JMOL ON THE
11:45:41 11 AFFIRMATIVE DEFENSE, I THINK WE WOULD DISCUSS IT AT THAT POINT.

11:45:44 12 BUT I WOULD CERTAINLY AGREE, AND SO WITH THAT THEN, I WILL
11:45:51 13 ISSUE A JUDGMENT, AND I WILL DO THAT IN THE NEXT COUPLE OF
11:45:55 14 DAYS, AND IT WILL SIMPLY ATTACH THE VERDICT AND INDICATE THE --
11:46:05 15 THE CONCLUSION OF THE JURY.

11:46:07 16 I DON'T KNOW WHETHER -- I DON'T KNOW THE STATE OF THE LAW
11:46:11 17 ON ATTORNEY'S FEES, WHETHER IT'S ANY DIFFERENT THAN PATENT, I
11:46:15 18 ASSUME THERE WILL BE A MOTION, THERE WILL BE ALL KINDS OF
11:46:18 19 MOTIONS, BUT THEY HAVE TIMELINES THAT POST-DATE THE JUDGMENT
11:46:24 20 ITSELF.

11:46:24 21 THERE'S NOTHING I NEED TO DO BEFORE THE JUDGMENT IS
11:46:27 22 ENTERED?

11:46:28 23 MR. VAN NEST: THAT'S CORRECT.

11:46:28 24 THE COURT: I JUST -- EVERY ONCE IN A WHILE, I PULL
11:46:31 25 THE TRIGGER A LITTLE TOO FAST ON THE JUDGMENT BECAUSE I WANT

11:46:34 1 YOUR CLOCK TO START RUNNING, AND I KNOW AS PAINFUL AS THAT IS,
11:46:38 2 BUT THAT'S WHAT I WILL BE DOING.

11:46:39 3 AND I DON'T THINK YOU NEED TO PRESENT ME WITH A PROPOSED
11:46:42 4 JUDGMENT UNLESS IT'S YOUR PRACTICE TO DO THAT, SO THAT I CAN
11:46:45 5 CONSIDER IT.

11:46:46 6 MR. VAN NEST: IF YOUR HONOR WISHES ONE, WE WILL DO
11:46:48 7 IT, BUT OTHERWISE, WE DON'T NEED TO DO.

11:46:50 8 THE COURT: MINE ARE VERY SIMPLE, SO I DON'T NEED YOU
11:46:53 9 TO GO TO THAT TROUBLE.

11:46:54 10 MR. VAN NEST: ALL RIGHT. THAT'S FINE.

11:46:55 11 THE COURT: ALL RIGHT.

11:46:56 12 THE LAST THING I WANTED TO DO THAT WAS SIMPLY MAKE A
11:46:59 13 RECORD ON THE ISSUE THAT CAME UP IN THE JURY QUESTION FROM
11:47:03 14 YESTERDAY.

11:47:03 15 AND I WANTED TO MAKE A LITTLE BIT OF A RECORD, AND OF
11:47:06 16 COURSE I WILL HEAR FROM EITHER SIDE IF YOU WISH TO AS WELL.

11:47:11 17 THERE WERE TWO JURY QUESTIONS, AND THEY HAD TO DO WITH THE
11:47:14 18 SCÈNES À FAIRE DEFENSE. AND THE COURT GAVE A RESPONSE TO THE
11:47:18 19 JURY THAT WAS AGREED TO BY THE PARTIES. SO THAT, OF COURSE,
11:47:23 20 I'M NOT GOING TO TOUCH.

11:47:24 21 I DID -- IN THAT DISCUSSION, WE DID HAVE A FURTHER
11:47:28 22 DISCUSSION ON JURY INSTRUCTION 61, WHICH WAS REFERENCED TO THE
11:47:32 23 JURY, AND ON QUESTION NUMBER 2 OF THE VERDICT FORM, WHICH WAS
11:47:35 24 REFERENCED TO THE JURY.

11:47:36 25 AND I WANTED THE RECORD TO BE CLEAR THAT IN VERSION 2 OF

11:47:41 1 CISCO'S PROPOSED JURY INSTRUCTIONS, WHICH THE COURT REVIEWED
11:47:45 2 WITH COUNSEL ON NOVEMBER 22ND, THE COURT RULED THAT IT WOULD
11:47:50 3 ADOPT CISCO'S VERSION OF THE PROPOSED JURY INSTRUCTION 61.

11:47:58 4 VERSION 3, SUBMITTED BY THE PARTIES, OF THE JURY
11:48:01 5 INSTRUCTIONS, INCLUDED AN IDENTICAL PROPOSAL BY CISCO FOR
11:48:06 6 INSTRUCTION NUMBER 61. AND THAT'S WHAT THE COURT ADOPTED.

11:48:11 7 THEREAFTER, AS THE PARTIES CONTINUED TO DISCUSS THE JURY
11:48:20 8 INSTRUCTIONS, THE COURT RECEIVED, AS A FINAL JURY INSTRUCTION,
11:48:24 9 INSTRUCTION NUMBER 61 WITH SOME MINOR CHANGES IN IT THAT THE
11:48:28 10 COURT HAD NEVER BEEN ASKED TO CONSIDER.

11:48:30 11 AND THEY WERE SUBMITTED BY STIPULATION OF THE PARTIES AND
11:48:33 12 ADOPTED BY THE COURT ON THAT BASIS, AND ON THE FOUNDATION OF
11:48:38 13 THE COURT APPROVING, WITHOUT MODIFICATION, CISCO'S PROPOSED
11:48:42 14 INSTRUCTION NUMBER 61.

11:48:45 15 AS TO QUESTION 2 ON THE VERDICT FORM, WITH THE EXCEPTION
11:48:49 16 OF MOVING THE AFFIRMATIVE DEFENSES OF ABANDONMENT AND COPYRIGHT
11:48:56 17 MISUSE TO QUESTION NUMBER 5, THE COURT ALSO INFORMED THE
11:48:59 18 PARTIES THAT IT WOULD ADOPT CISCO'S VERSION OF THE VERDICT
11:49:04 19 FORM. I HAD DONE THAT BY AN E-MAIL TO THE PARTIES IN ADVANCE.

11:49:08 20 THEREAFTER, WHEN THE PARTIES SUBMITTED TO THE COURT THE
11:49:11 21 FINAL VERDICT FORM, QUESTION 2 HAD MODIFIED, BUT IT WAS
11:49:16 22 SUBMITTED TO THE COURT BY THE STIPULATION OF THE PARTIES, AND
11:49:19 23 THE COURT ADOPTED IT AS STIPULATED AND PRESENTED IT TO THE
11:49:24 24 COURT WITHOUT OBJECTION.

11:49:25 25 SO THAT IS MY RECORD, WHILE IT'S FRESH IN MY MIND, BECAUSE

11:49:30 1 I CERTAINLY HAVE HANDWRITTEN NOTES ON THIS, AND WE DISCUSSED
11:49:33 2 THIS YESTERDAY AND I WANTED TO MAKE A RECORD OF THAT.

11:49:36 3 COUNSEL, DO EITHER ONE OF YOU WISH TO MAKE A COMMENT ON
11:49:38 4 THE RECORD I'VE JUST STATED?

11:49:40 5 MR. VAN NEST: YOUR HONOR, YOUR RECITATION IS
11:49:43 6 CORRECT.

11:49:43 7 THE COURT: THANK YOU.

11:49:44 8 MR. NELSON: THAT'S PERFECTLY FINE. I DON'T HAVE ANY
11:49:47 9 DISPUTE WITH THAT, YOUR HONOR.

11:49:48 10 THE COURT: THANK YOU, MR. NELSON.

11:49:49 11 ALL RIGHT. I HAVE NOTHING FURTHER. I WANT TO THANK ALL
11:49:52 12 OF YOU.

11:49:53 13 MR. NELSON: MIGHT WE JUST HAVE A BRIEF MOMENT?

11:49:58 14 THE COURT: YEAH.

11:49:59 15 MR. NELSON: OKAY. THANK YOU, YOUR HONOR. I
11:50:00 16 APPRECIATE IT.

11:50:01 17 THE COURT: OKAY. ALL RIGHT.

11:50:02 18 IS THERE ANYTHING ELSE ON THE RECORD?

11:50:04 19 MR. NELSON: NO.

11:50:05 20 THE COURT: ALL RIGHT. WHILE WE ARE ON THE RECORD,
11:50:07 21 I'M LOOKING OUT IN AN AUDIENCE WITH TEAMS OF LAWYERS AND STAFF
11:50:11 22 WHO HAVE SUPPORTED THE ATTORNEYS WHO HAVE PRESENTED THIS CASE
11:50:15 23 TO THE JURY, AND I WANT TO THANK ALL OF YOU FOR YOUR REMARKABLE
11:50:19 24 WORK IN THIS CASE.

11:50:22 25 AND I KNOW IT TAKES AN ARMY TO SUPPORT THE TRIAL LAWYERS

11:50:25 1 WHO STAND UP BEFORE THE JURY. I ONLY WISH I HAD AN ARMY AS BIG
11:50:29 2 AS YOURS. I HAVE TALENT EQUAL TO YOURS, BUT I DON'T HAVE THE
11:50:33 3 SIZE.

11:50:34 4 AND SO IT WAS -- BUT I REALLY APPRECIATE ALL THAT YOU DO
11:50:38 5 AND THE PROFESSIONALISM THAT YOU SHOWED THE COURT.

11:50:41 6 SO THANK YOU VERY MUCH.

11:50:42 7 MR. VAN NEST: THANK YOU, YOUR HONOR.

11:50:42 8 AND WE WANT TO JOIN, I THINK BOTH PARTIES, IN THANKING
11:50:45 9 YOUR HONOR AND YOUR STAFF FOR ALL THE HARD WORK. AND IT WAS A
11:50:49 10 DIFFICULT COUPLE OF WEEKS, AND THE STAFF PERFORMED AT THE VERY
11:50:53 11 TOP LEVEL. AND WE APPRECIATE THAT.

11:50:55 12 THE COURT: ALL RIGHT. THANK YOU.

11:50:57 13 MR. NELSON: AND I ECHO THOSE COMMENTS COMPLETELY,
11:51:00 14 YOUR HONOR.

11:51:00 15 THE COURT: ALL RIGHT. THANK YOU.

11:51:01 16 THEN THAT'S EVERYTHING FOR THE RECORD?

11:51:02 17 MR. VAN NEST: YES.

11:51:03 18 MR. NELSON: YES, YOUR HONOR.

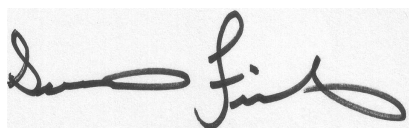
11:51:05 19 MR. VAN NEST: THANK YOU.

11:51:05 20 (THE PROCEEDINGS WERE CONCLUDED AT 11:51 A.M.)
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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in black ink, appearing to read "Summer A. Fisher", is written over a light gray rectangular background.

SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATED: 12/14/16